

JOHN B. ROSE.

[To accompany bill H. R. No. 706.]

JANUARY 17, 1857.—Ordered to be printed.

Mr. THORINGTON, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom House bill No. 706, for the relief of John B. Rose, of Wabash county, Indiana, was referred, make the following report:

The following are the facts on which this application is made: General Rose entered the regular army as ensign, October 7, 1812, after the recent declaration of war by the United States against Great Britain. In May, 1813, he was promoted to a second lieutenancy in the 15th regiment of United States infantry.

In the following year, after nearly two years of service on the northern lines, and in the midst of the honorable events of Lake Champlain, in which his regiment participated, Lieutenant Rose became unhappily complicated with Lieutenant Roberts of the same regiment. A duel ensued between them, and in consequence of it, by general orders of General Armstrong, Secretary of War, the names of both were, on the 14th August, 1814, "stricken from the rolls for fighting a duel."

Lieutenant Rose's discharge, it will be noticed, was by general orders. It thus excluded a personal hearing, which would have been permitted on the intervention of a military court.

Application was at once made by him to the Secretary of War to be reinstated. His early preferment from the ranks to the condition of a commissioned officer, and, at the very time of his discharge, the honorable testimony of his companions in service of his character and conduct as a soldier, as shown in their letter to him on the occasion, which the committee has subjoined to this report, and in which the act of private combat, for which he was removed, is spoken of as "not attaching the least blame to his character as an officer or gentleman, but enhancing both," are regarded as evincing his honorable estimation among his associates in arms.

The speedy suspension of hostilities in the north, followed by a speedy proclamation of peace, and the melting of the active army

down to a peace establishment, removed the prominent reason for pressing the application. No decision has ever been made on it.

General Rose applied in the autumn of 1852, through Hon. Samuel W. Parker, to the Hon. J. E. Heath, then Commissioner of Pensions, for the issuing of a land warrant under the act of September 28, 1850. The benefits of this statute, by its letter, were limited to those, only, who had been honorably discharged. At this time, record evidence, alone, was permitted to establish the qualifications of the service; and the application of General Rose was refused, because the record of his discharge did not seem to bring him within the letter of the law. The letter of Commissioner Heath is appended to this report.

An appeal was taken from this decision to the Secretary of the Interior, the official superior of the Commissioner of Pensions. Notwithstanding his favorable inclination to the application, a reference was made by him to the Secretary of War, to determine if this discharge was within the meaning of the act of 28th September, 1850. The decision was adverse to the application. The letters of the departments are appended to this report.

The committee concur in the decisions made, respectively, by the Commissioner of Pensions and the Secretary of the Interior, but only on the letter of the law, and not from its spirit and principle. The spirit of the law is to reward those who have served the country in the field. The letter of it determines the quality of the service by official regulation.

But the offence of Lieutenant Rose, in fighting a duel, is, in the language of the Secretary of War, purely technical. Except in violating a military rule, it was not a military offence. A private combat has no moral turpitude or degradation in it; it makes no spot in a soldier's honor. It has no kindred to the infirmities of desertion and cowardice, but tries, at private risk, the same generous qualities that makes the soldier a hero in battle. In this case, if it had not been forbidden by a recent order of the Department of War, it would have gone unnoticed, and imported no unsoldierly quality.

It is understood to be in the view, that Rose's services were meritorious, notwithstanding this instance of transgressing discipline, and in the spirit, if not in the letter of this law, left him standing on a footing of common merit with other officers of the war, that the Secretary of the Interior makes use of the following language:

"The claim, therefore, was rejected upon pure technical grounds alone, which were deemed imperative under the provision of the act of 1850; although, upon its intrinsic merits, it was my opinion, and still is, that the claim is a meritorious one, which, although there is no authority in this department to allow under existing laws, is a just and proper one for the beneficent interposition of Congress."

Taking into consideration, then, his volunteer enlistment in the service, his prompt preferment, (which implies merit,) the duration and field of service, the commendation of his official comrades, his discharge from the service by general orders, the pending application for restoration to his rank during the war, and the objection (technical purely)

for excluding him from the benefits of the act of 1850, the committee cannot but think his services were meritorious, and his discharge not dishonorable.

The committee, therefore, report back the bill, with a recommendation that it be passed.

Letter from officers of the 14th, 15th, and 16th regiments United States infantry to Lieutenant John B. Rose.

CAMP, NORTHFIELD, NEAR CHAMPLAIN,
August 20, 1814.

MR. JOHN B. ROSE: It was with peculiar and lively regret we noticed a general order, a few days since, whereby the 15th regiment is deprived of an useful and valuable officer. You have the consolation to know that it was for an act which cannot attach the least blame to your character as an officer or a gentleman, but enhances both.

It affords the undersigned officers pleasure in testifying to your good conduct as an officer and a gentleman. Sincerely regretting the necessity of your leaving us, our best wishes for your health and prosperity accompany you, and, we flatter ourselves, you will be shortly returned to your former rank in the 15th regiment United States infantry.

Respectfully, yours,

J. D. HAYDEN, *Capt. 15th infantry.*
JOSEPH SCOFIELD, *Lieut. 15th infantry.*
S. McDOUGALL, *Lieut. 15th infantry.*
R. T. BAKER, *Surgeon's mate 15th infantry.*
SAMUEL GILLILAND, *Surgeon 16th infantry.*
HENRY GRUNDAGE, *Major 15th infantry.*
ZACH'A ROSSEL, *Major 15th infantry.*
A. GODWIN, *Lieut. 15th infantry.*
J. DICKINSON, *Lieut. 15th infantry.*
J. WHISLER, *Lieut. and Adj't 16th infantry.*
WM. COFFEE, *Lieut. and q'r m'r 15th infantry.*
SAMUEL RIDDLE, *Lieut. 15th infantry.*
H. M. MEAD, *Lieut. 15th infantry.*
JOHN D. AITKINS, *Capt. 16th infantry.*
M. GREENWOOD, *Capt. 16th infantry.*
THOMAS EVANS, *Lieut. 16th infantry.*
M. THOMAS, JR., *Lieut. 16th infantry.*
J. McELROY, *Capt. 16th infantry.*
CHARLES FOSTER, *Lieut. 16th infantry.*
T. McMAHAN, *Lieut. 16th infantry.*
JOHN D. COON, *Capt. 16th infantry.*
HENRY H. VAN DALUM, *Capt. 16th infantry.*
CROMWELL PEARCE, *Col. 16th infantry.*
ROBERT GRAY, *Major 16th infantry.*
JOSEPH L. BARTON, *Capt. 15th infantry.*

GEORGE BRYAN, *Lieut. 16th infantry.*
 HECTOR BURNS, *Lieut. 16th infantry.*
 NO. YOUNG, *Lieut. 16th infantry.*
 THOMAS FINLEY, *Lieut. 16th infantry.*
 HENRY MASTON, *Lieut. 16th infantry.*
 ZAC. S. CONGER, *Lieut. 15th infantry.*
 DANIEL E. BURCH,
 Lieut. and paymaster 15th infantry.
 THOMAS N. POWERS,
 Lieut. and paymaster 16th infantry.
 GEORGE G. STEEL, *Capt. 16th infantry.*
 GEORGE McGLOSSIN, *Capt. 15th infantry.*
 JOSEPH MARSHALL, *Capt. 14th infantry.*
 E. L. WHITLOCK,
 Lieut. Col. 14th regiment U. S. infantry.

Letter of the Commissioner of Pensions to Hon. Samuel W. Parker.

PENSION OFFICE, *January 13, 1853.*

SIR: I should have answered sooner your letter of the 6th instant, but deemed it advisable, first, to ascertain at the War Department what proceedings had been had in the case of Lieutenant, now General Rose. From your representations, I felt anxious to arrive at a favorable result, and if I had any discretion in the matter, I should not hesitate a moment to allow the claim.

The clerk who made the examination at the department reports to me, after careful examination, that all he can find is that Lieutenant Rose was stricken from the rolls for fighting a duel. He does not find any mention of the fact that the Secretary of War recommended his reinstatement. If that was the fact, and he was accordingly reinstated, it would at once settle the question. The promise of land bounty seems always to be coupled with the condition of an honorable discharge, and although, in strictness, there was nothing dishonorable in the dismissal from the service for the cause alleged, yet still it was an act of disobedience, which is considered a high military offence.

I sincerely regret that the rules which govern the office in the allowance of land bounty forbid the admission of the claim. It is possible, however, that the Secretary of the Interior, my official superior, may take a different view of the subject, should you think proper to consult him.

It gives me pleasure to forward you the commission of Mr. Rose, which I have found among the papers.

I have the honor to be, very respectfully, your obedient servant,
 J. E. HEATH, *Commissioner.*

HON. S. W. PARKER,
House of Representatives.

Letter from the Secretary of the Interior to Hon. John U. Pettit.

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1856.

SIR: I have the honor to transmit herewith the copy of a communication from the Secretary of War, expressing his opinion upon the effect of the discharge of General John B. Rose from the army of the United States, while second lieutenant of the 15th regiment of infantry during the last war with Great Britain, for fighting a duel, so far as such discharge affects his claim for bounty land under the act of September 28, 1850.

The military department of the government having therein decided that his dismissal under the circumstances must be technically held to be a "dishonorable discharge," I am constrained, notwithstanding the previous bias of my mind in favor of admitting the claim, to confirm the original decision of the Pension Bureau rejecting it.

I am, with much respect, your obedient servant,

R. McCLELLAND.

Hon. J. U. PETTIT,
House of Representatives.

Letter from the Secretary of War to the Secretary of the Interior.

WAR DEPARTMENT,
Washington, April 7, 1856.

SIR: I have received and considered your letters of January 18 and March 20, asking the views of this department as to the effect of the entry on the rolls of the 15th regiment of infantry, during the late war with Great Britain, representing second lieutenant John B. Rose as having been "stricken from the rolls of the army." The question before you is, whether such a separation from the army is an honorable or a dishonorable discharge within the meaning of the bounty land act of September 28, 1850.

This mode of severing an officer's connexion with the army is adopted only when, in the opinion of the proper authority, his longer retention in the service is palpably improper. The act being done by competent authority, its legal effect is independent of the grounds on which it proceeded. In the present case, however, it appears that the dismissal was in consequence of having fought a duel in violation of a general order, published to the army a few weeks before the act; and it is obvious that the highest considerations of public interest may require the suppression of private combats between officers of the army in the face of an enemy. The judgment of the proper authority was pronounced in the orders issued on the occasion, and the dismissal must be technically held to have been a "dishonorable discharge."

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

Letter of the Secretary of the Interior to the Hon. John U. Pettit.

DEPARTMENT OF THE INTERIOR,
Washington, July 22, 1856.

SIR: I have the honor to acknowledge the receipt, this day, of your letter of the 21st instant, requesting the facts in the case of the application of General John B. Rose, of Indiana, for bounty land, under the act of September 28, 1850.

In reply, I have to state that the claim was pending upon an appeal from the decision of the Commissioner of Pensions to this department at the time it came under my charge, and my attention being called to it, the claim appeared to me, upon examination, to be a meritorious one. The rejection of its allowance by the Pension Bureau rested entirely upon the technical effect of the entry upon the rolls, to wit: "stricken from the rolls of the army." The effect of this entry, in connexion with the provision of the act of 1850, which requires that the soldier should have received an honorable discharge, being a military question, was referred to the Secretary of War for his opinion. In reply to which was: "The judgment of the proper authority was pronounced in the orders issued on the occasion, and the dismissal must be technically held to have been 'a dishonorable discharge.' " Upon this opinion of the highest military authority upon the entry upon the rolls, this department, in the strict execution of the act, was constrained to affirm the decision of the Pension Bureau.

The claim, therefore, was rejected upon pure technical grounds alone, which were deemed imperative under the provision of the act of 1850, although, upon its intrinsic merits, it was my opinion, and still is, that the claim is a meritorious one, which, although there is no authority in this department to allow under existing laws, is a just and proper one for the beneficent interposition of Congress.

I have preferred addressing this communication to you personally, instead of the Hon. Mr. Bennett, for the reason that the inquiry, which is the subject of your letter, has not been made by him in his capacity as Chairman of the Committee on Public Lands, in which capacity you requested that he should be addressed in the matter, and the present communication being an official one, will equally answer the object of your request.

I am, sir, with much respect, your obedient servant,

R. McCLELLAND, *Secretary.*

Hon. JOHN U. PETTIT,
House of Representatives.

